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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.) No. 04 CR 650-1
)
)
CARMEN HERNANDEZ,)
)
 Defendant.)

MEMORANDUM ORDER

Carmen Hernandez ("Hernandez") has just submitted a self-prepared "Motion To Eliminate Enhancements and Reduce Sentence," in which she looks to United States v. Booker, 125 S.Ct. 738 (2005) as the basis for claiming a violation of her rights under the Sixth Amendment. According to Hernandez, those "rights were violated by imposing sentencing enhancements based on the sentencing judge's determination of facts that were not found by a jury beyond a reasonable doubt nor admitted by the petitioner."

That notion is simply mistaken as a factual matter (and hence as a legal matter as well). This Court has reviewed both Hernandez' plea agreement and Probation Officer Michael Alper's presentence investigation report ("PSI"), and it has also listened to the tape recording of the April 28, 2005 sentencing proceeding. That review has reconfirmed this Court's independent recollection of that proceeding--in truth, nothing in the documentation or in the sentencing proceeding itself involved any factual determination by this Court that had not been expressly

admitted by Hernandez in her plea agreement--indeed, her able counsel Robert Korenkieicz, Esq. acknowledged at the very outset of the sentencing hearing that the Sentencing Guidelines calculation by Probation Officer Alper contained in the PSI was correct, and there is no question that the calculation tracked entirely the agreed-upon underlying facts (as well as the like calculation) that were contained in the plea agreement that Hernandez had earlier entered into freely, voluntarily and with full knowledge.

In sum, this Court made no determination whatever of any facts as to which Hernandez had not specifically confirmed her full admission. Moreover, this Court imposed a sentence at the very bottom of the Sentencing Guideline range that has become advisory rather than mandatory post-Booker. Accordingly, as stated earlier, Hernandez' motion is based on a misunderstanding on her part. It is denied.



Milton I. Shadur
Senior United States District Judge

Date: January 18, 2006